IN THE HIGH COURT OF BOMBAY AT PANAJI

CRIMINAL MISC. APPLICATION (MAIN) NO. 133 OF 2007

Shri Gajanan Dattaram Arondekar,
Son of Dattaram Bhiku Arondekar,
27 years of age,
Indian National,
R/o. House No. 409, Shirodawadi,
Mulgao, Bicholim, Goa. .... Applicant

V/s

1. Nutan Babuli Naik,
Dughter of Shri Babuli Naik,
R/o. H.No. 23, Behind Goa Tractors,
Karaswada,
Mapuca, Bardez, Goa.

2. Sahil Gajanan Arondekar,
Applicant No.2 is minor and is represented
by his next friend (natural Guardian)
i.e. the applicant No.1 herein,
resident of address same as above. .... Respondents

Mr. Prashant Vengurlekar, Advocate for the Applicant.

Mr. Gaursih Nagvekar, Advocate for the Respondents.

Coram : N.A. BRITTO, J.

Date : 19th July, 2007

ORDER :

Heard learned counsel on behalf of both the parties.

2. Challenge in this petition, filed under Section 482 of the Code of

Criminal Procedure, 1973, (Code, for short) is to the order dated 3/04/2007, by which the learned JMFC, Mapusa has directed interim maintenance to be paid to the respondents i.e. the wife and the minor child of the petitioner.

3. The inquiry in the main application under Section 125 of the Code is pending although the same was filed on or about 16/02/2006. The learned JMFC, therefore, is hereby directed to dispose of the same as expeditiously as possible and in an event within a period of six months from the date of the receipt of copy of this order. Needless to observe, the applications for maintenance are required to be disposed of expeditiously.

4. The petitioner's wife had sought interim maintenance in the sum of Rs. 5,000/- per month, each for herself and her minor son i.e. to say Rs. 10,000/- and against the said claim the learned JMFC was pleased to award to them a sum of Rs. 5,000/- only. The petitioner's wife had alleged that the petitioner's income was Rs. 30,000/- per month, an allegation which was denied by the petitioner. On behalf of the petitioner it is contended that the petitioner does not have any business as claimed by his wife and all that he earns is mere amount of Rs. 1,350/- per month by selling newspapers. On behalf of the petitioner reliance has been placed on the case of ***Kuldeep Kaur V/s. Surinder Singh (1989 SCC (1) 405)***. On behalf of the respondents,

reliance has been placed on ***Rajathi V/s. C. Ganesan (1999 (6) SCC 326)*** and it is submitted by the learned Counsel that it is not even required of the respondents to have proved as to what was the income of the petitioner.

5. The Apex Court in the case of ***Rajathi*** (supra) has stated that it would be for the husband to show that he had no sufficient means to discharge his obligation and that he did not neglect or refuse to maintain them or any one of them and that the statement of the wife that she was unable to maintain herself would be enough and it would be for the husband to prove otherwise. The Apex Court has also noted that the powers under section 482 of the Code are no substitute for a second revision under sub-section (3) of section 397 of the Code.

6. In my view, the conclusion arrived at by the learned Magistrate in para eleven of the order cannot be faulted. The learned Magistrate has observed that the case of the applicant was not specifically denied by the respondent nor the respondent has stated as to what he was doing, though he denied that he was having any business. Considering the available material on record at the the interim stage, in my view, the conclusion arrived at by the learned JMFC cannot be faulted.

7. This is not a fit case for interference in extraordinary jurisdiction. Therefore the petition is hereby dismissed with directions as stated herein above.

N.A. BRITTO, J.

NH/-